

Hamed Ali Abouelsaoud
(A# 097 981 364)

Plaintiff,

v.

Michael B. Mukasey
U.S. Attorney General;
and
Ruth A. Dorochoff
District Director,
Chicago District,
United States Citizenship
and Immigration Services

Defendants

FILED

APRIL 14, 2008

08CV2111

JUDGE NORGLÉ

MAGISTRATE JUDGE KEYS

YM

Case No.

**PLAINTIFF'S ORIGINAL COMPLAINT
FOR WRIT OF
MANDAMUS**

COME NOW Hamed A. Abouelsaoud, Plaintiff in the above-styled and numbered cause and for cause of action would show unto the Court the following:

1. This action is brought against the Defendants to compel action on an Application to Adjust Status (USCIS Form I-485) properly filed by the Plaintiff. The application was filed and remains within the jurisdiction of the Defendants, who have improperly withheld action on said application to Plaintiff's detriment.

PARTIES

2. Plaintiff Hamed Abouelsaoud, is a 40-year-old native and citizen of Egypt. Plaintiff filed an Application to Adjust Status (USCIS Form I-485) on October 30, 2003. Plaintiff has

3. Defendant Michael B. Mukasey is Attorney General of the United States, and this action is brought against him in his official capacity. He is generally charged with enforcement of the Immigration and Nationality Act, and is further authorized to delegate such powers and authority to subordinate employees of the United States Citizenship and Immigration Services (USCIS). More specifically, the Attorney General is responsible for the adjudication of applications for adjustment of status filed pursuant to §245 of the Immigration and Nationality Act (INA), 8 USC §1255.
4. Defendant Ruth A. Dorochoff is sued in her official capacity. She is a USCIS District Director. District Director is an official of the United States Citizenship and Immigration Services (USCIS) generally charged with supervisory authority over all operations of the USCIS within her District with certain specific exceptions not relevant here. As will be shown, Defendant District Director is the official with whom Plaintiff's Application to Adjust Status is now pending.

JURISDICTION

5. This Court has jurisdiction over this action pursuant to 28 USC §1331 (federal subject matter jurisdiction) in conjunction with 28 USC §1361 (mandamus), the Administrative Procedure Act (APA) (5 USC §555(b) and 5 USC §702), and the Immigration and Nationality Act and regulations implementing it (Title 8 of the CFR).
6. Under 28 USC §1331, "(t)he district courts shall have original jurisdiction of all civil actions arising under the Constitution, law, or treaties of the United States." There is jurisdiction under 28 USC §1331 because this action arises under 28 USC §1361 (mandamus), the Administrative Procedure Act (APA) (5 USC §555(b) and 5 USC §702), and the Immigration and Nationality Act (INA) and regulations implementing it (Title 8 of the CFR).
7. Under 28 USC §1361, "(t)he district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff."
8. The APA requires USCIS carry out its duties within a reasonable time. The provision of the APA that provides this is 5 USC §555(b), which states that "(w)ith due regard for the convenience and necessity of the parties or their representatives and within a reasonable time, each agency shall proceed to conclude a matter presented to it." USCIS is subject to

VENUE

9. Venue is proper in this court, pursuant to 28 USC §1391(e)(3), in that this is an action against officers and agencies of the United States in their official capacities, brought in the District where a Defendant resides and where a substantial part of the events or omissions giving rise to Plaintiff's claim occurred. More specifically, Plaintiff's Application to Adjust Status was properly filed and, to Plaintiff's knowledge, remains pending with the Chicago USCIS District Director.

EXHAUSTION OF REMEDIES

10. Plaintiff has exhausted his administrative remedies. Plaintiff has, through his attorney and on his own, made numerous inquiries concerning the status of the application to no avail. The most recent inquiry was made on November 02, 2006. Plaintiff's application is well outside the normal processing time taken to process an I-485 application to adjust status.

FACTS

11. Hamed Abouelsaoud is a native and citizen of Egypt. He was born on November 02, 1966.
12. Plaintiff applied for adjustment of status in the United States based on his marriage to Trisa Ward, a United States citizen.
13. Approval of this application is necessary for the Plaintiff to receive Permanent Resident status in the United States and a Legal Permanent Resident card as evidence of such status.
14. All legal prerequisites having been satisfied, Plaintiff timely filed his Application to Adjust Status with the USCIS Missouri Service Center on October 30, 2003.
15. Plaintiff's Petition was subsequently transferred to the USCIS Chicago District Office for an interview on December 02, 2004.
16. The adjudicating officer refused to conduct the adjustment of status interview and informed the Plaintiff that the case will be sent to investigations.
17. Plaintiff's Application to Adjust Status has now remained adjudicated for well over four years.

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18. Defendants have sufficient information to determine Plaintiff's eligibility pursuant to applicable requirements. To date, said application has not been adjudicated.
 19. Defendants' refusal to act in this case is, as a matter of law, arbitrary and not in accordance with the law. Defendants willfully, and unreasonably, have delayed in and have refused to, adjudicate Plaintiff's applications for over three years, thereby depriving him of the right to a decision on his status and the peace of mind to which Plaintiff is entitled.
 20. Plaintiff has been greatly damaged by the failure of Defendants to act in accord with their duties under the law.
 - (a) Specifically, Plaintiff has to apply and obtain a travel document in order to travel outside the United States while his application for adjustment of status is pending. This situation operates to the great inconvenience and harassment of Plaintiff.
 - (b) Plaintiff has especially been damaged by his inability to travel often as he has three young children from a previous marriage that currently reside in Egypt. He has not been able to visit his children often during the pendency of his application.
 - (c) Plaintiff has further been damaged by his inability to accept employment during the pendency of his application. He has not been issued authorization to work by USCIS for over a year now.
 - (d) Plaintiff has further been damaged by simply being deprived of the status of lawful permanent resident during the interminable pendency of his application.
 21. The Defendants, in violation of the Administrative Procedures Act, 5 USC §701 *et seq.*, are unlawfully withholding or unreasonably delaying action on Plaintiff's application and have failed to carry out the adjudicative functions delegated to them by law with regard to Plaintiff's case.
 22. Plaintiff has made numerous status inquiries in an attempt to secure adjudication of his application, all to no avail. Accordingly, Plaintiff has been forced to retain the services of an attorney to pursue the instant action.

WHEREFORE, and in light of the foregoing, Plaintiff, Mr. Hamed Abouelsaoud, prays that the Court:

- A. Assume jurisdiction herein;
- B. Compel the Defendant and those acting under her to perform their duty or duties to adjudicate Plaintiff's application to adjust status;

- C. Grant such other and further relief, as the Court deems appropriate and just;
- D. Grant attorney's fees and costs of court.

Dated: Chicago, Illinois

April 14, 2008

Respectfully submitted,
Law Offices of Michael J. Thoren
734 Asbury Avenue
Evanston, IL 60202
847-869-2453

By: s/Anjana Prasad
Anjana Prasad

LIST OF ATTACHMENTS

Exhibit Description

1. Receipt Notice for I-485 Application to Adjust Status.
2. Letter from Plaintiff's previous attorney inquiring about the case.

VERIFICATION

Anjana Prasad, under penalty of perjury, states the following:

1. I am an attorney admitted to practice before this Court. I am employed by the Law Offices of Michael J. Thoren, the attorneys for the Plaintiff in the foregoing Complaint.
2. I affirm the truth of the contents of the foregoing Complaint upon information and belief. The sources of my information and belief are documents provided to me by, and conversations with, the Plaintiff.

Dated: Chicago, Illinois

April 14, 2008

s/ Anjana Prasad
Anjana Prasad

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MAGISTRATE JUDGE KEYS

EXHIBIT 1

THE UNITED STATES OF AMERICA

Receipt Number: MSC-04-028-14867		Case Type: I-485 - Application to Register Permanent Residence or Adjust Status	
Received Date: October 20, 2003	Priority Date:	Applicant: A097981364 ABOUELSAOU, HAMED	
Notice Date: October 30, 2003	Page 1 OF 1	ASC Code: 3	

MARK ANVARIPOUR
180 N LASALLE ST STE 1919
CHICAGO IL 60601

Notice Type: Receipt Notice
Amount Received: \$305.00

The above application has been received. Please notify us immediately if any of the above information is incorrect. If you find it necessary to contact this office in writing, you must include a copy of this receipt notice with your inquiry.

FINGERPRINTING AND BIOMETRICS-

The next step is to have your fingerprints and biometrics taken at a BCIS Application Support Center (ASC).

Call our National Customer Service Center (NCSC) at 1-800-375-5283 to schedule your appointment. For TDD hearing impaired assistance, please call 1-800-767-1833.

It is important that you schedule your appointment. If you do not schedule or appear for your appointment, it could cause your application to be denied. If you need to reschedule your appointment, please call the NCSC at 1-800-375-5283.

WHAT TO BRING TO Your appointment -

Please bring this letter and your photo identification to your appointment. Acceptable kinds of photo identification are:

- a passport or national photo identification issued by your country,
- a driver's license,
- a military photo identification, or
- a state-issued photo identification card.

If you do not bring this letter and photo identification, we cannot process your application. Please bring a copy of all receipt notices received from BCIS in relation to your current application for benefits.

BIOMETRICS PROCESSING STAMP
ASC SITE CODE: REC
BIOMETRICS QA REVIEW BY:

ON
TENPRINTS QA REVIEW BY:

CASE STATUS -

Information about your local office processing times may be obtained by calling the NCSC at 1-800-375-5283.

If you have Internet access, you can visit the Bureau of Citizenship and Immigration Services website at www.BCIS.gov where you can find valuable information about forms, filing instructions, and immigration services and benefits.

U S BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES

P.O. BOX 648005

Lee's Summit, MO 64064

National Customer Service Center: 1-800-375-5283



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EXHIBIT 2



COPY Law Offices
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Ms. Stacey Summers, Brand Chief
US Department of Homeland Security
US Citizenship and Immigration Services
230 S. Dearborn, 23rd Floor
Chicago, IL 60604

January 19, 2005

Re: ABOUELSAoud, Hamed Ali
A 97 981 364

Dear Chief Summers:

We are the attorneys of record for the above-referenced applicant. On December 2, 2004, Mr. Abouelsaoud appeared for his I-130/ I-485 interview with his US citizen spouse. Officer Larkins declined to conduct an interview, review or accept the evidence offered. The adjudication officer advised that he had to send the file to investigation because the applicant who had divorced his spouse before entering the United States was now married to his present wife.

This conduct appears to be totally in contrast with our experience with adjudication process in this district. A decision to remote a case to the investigation branch is procedurally arrived at after a complete interrogation of the parties and the review of the evidence submitted at the time of the adjustment interview.

Please review this matter and schedule this case for an appointment giving the parties a comfortable forum in which to present their file.

Best regards,
ANVARIPOUR & ASSOCIATES

Plamen Marinov

cc: Debra G. Gordon, Associate Area Counsel, Chicago